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SOLID WASTE DIVISION
U.S. EPA, REGION V

Ford Motor Company
Ford Tractor Operations

DEC 02 1985

Romeo Tractor and
Equipment Plant
700 East 32 Mile Road
Romeo, Michigan 48065
November 19, 1985

Basil G. Constantelos, Director
Waste Management Division
U.S. Environmental Protection Agency
Region 5
230 South Dearborn Street
Chicago, Illinois 60604

U.S. EPA, REGION V

Subject: Information Request - Loss of Interim Status
Ford Romeo Tractor Plant - EPA ID No. MID 078400165 *G, TSD, PA*

Dear Mr. Constantelos:

This is in response to your request for information, dated November 1, 1985, concerning RCRA land disposal units that may be subject to the loss of interim status provisions of the Hazardous and Solid Waste Amendments of 1984. Individual responses to all of the four numbered items in your inquiry are as follows:

Information Request

1. Identify each RCRA land disposal unit at your facility by stating the common name or identifier used by the facility and Part A process code. Identify the unit on a photocopy of a topographic map attached to your response.

Response:

At present, there are no active RCRA land disposal units at the Ford Romeo Tractor Plant. There formerly existed two surface impoundments for sludge settling known as the East and West lagoons (see topographic map).

2. Identify each RCRA land disposal unit at your facility which was not within the scope of a certification of compliance with all applicable groundwater monitoring and financial responsibility requirements and a Part B permit application, transmitted to EPA by November 8, 1985, by indicating for each common name or identifier used by the facility and Part A process code, which unit must be identified on the topographic map in response to information request number 1, above.

Response:

Since no waste was accepted after November 8, 1985 into these units, no Part B application or Interim Status certification were required for the facilities identified in question 1 and none were filed.

3. For each RCRA land disposal unit at your facility which was not within the scope of a certification of compliance with all applicable groundwater monitoring and financial responsibility requirements and a Part B permit transmitted to EPA by November 8, 1985, state when and to whom a closure plan was submitted.

Response:

Closure activities relating to the two surface impoundments identified in question #1 were completed November 1, 1985 as detailed in the closure plan submitted to EPA Region V on October 1, 1984 and approved by EPA on March 13, 1985.

4. For each RCRA land disposal unit at your facility which was not the scope of a certification of compliance with all applicable groundwater monitoring and financial responsibility requirements and a Part B permit application transmitted to EPA by November 8, 1985.

- a. State the type and average quantity of hazardous waste placed in each on a daily (or monthly) average during the year prior to November 8, 1985.

Response:

The two surface impoundments that formerly existed at the subject plant stopped receiving waste on July 31, 1985. Prior to that date, approximately 48 cubic yards of sludge was processed per month based on average off-site disposal activities.

- b. State when the unit ceased receiving hazardous waste.

Response:

These lagoons stopped receiving waste on July 31, 1985.

- c. State whether hazardous waste was placed in the unit between November 8, 1985 and December 31, 1985.

Response:

No waste was accepted into the units identified in question 1 after November 8, 1985 inasmuch as these lagoons stopped receiving waste on July 31, 1985 and closure pursuant to an approved closure plan was completed on November 1, 1985.

- d. State whether hazardous waste introduced into the unit before November 8, 1985 has been treated, stored, or disposed of between November 8, 1985 and December 31, 1985.

Response:

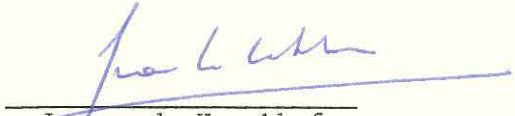
All waste has been removed prior to November 1, 1985 according to the approved closure plan and disposed of off-site at an EPA approved facility.

- e. State how you intend to treat, store, or dispose of that hazardous waste identified in "d", in 1986, including the identity of any off-site facility to which you intend to ship it.

Response:

Does not apply. All waste has been removed prior to November 1, 1985 and appropriately landfilled at Wayne Disposal, Inc. (MID 048090633).

Inasmuch as the above responses fully answer all four questions contained in the information request and since the two surface impoundments are now closed, no further reporting is indicated. Questions, if any, may be addressed to Mr. J. S. Amber of the Ford Stationary Source Environmental Control Office on (313) 322-4646.



J. van de Kerckhof,
Plant Manager

Attachments

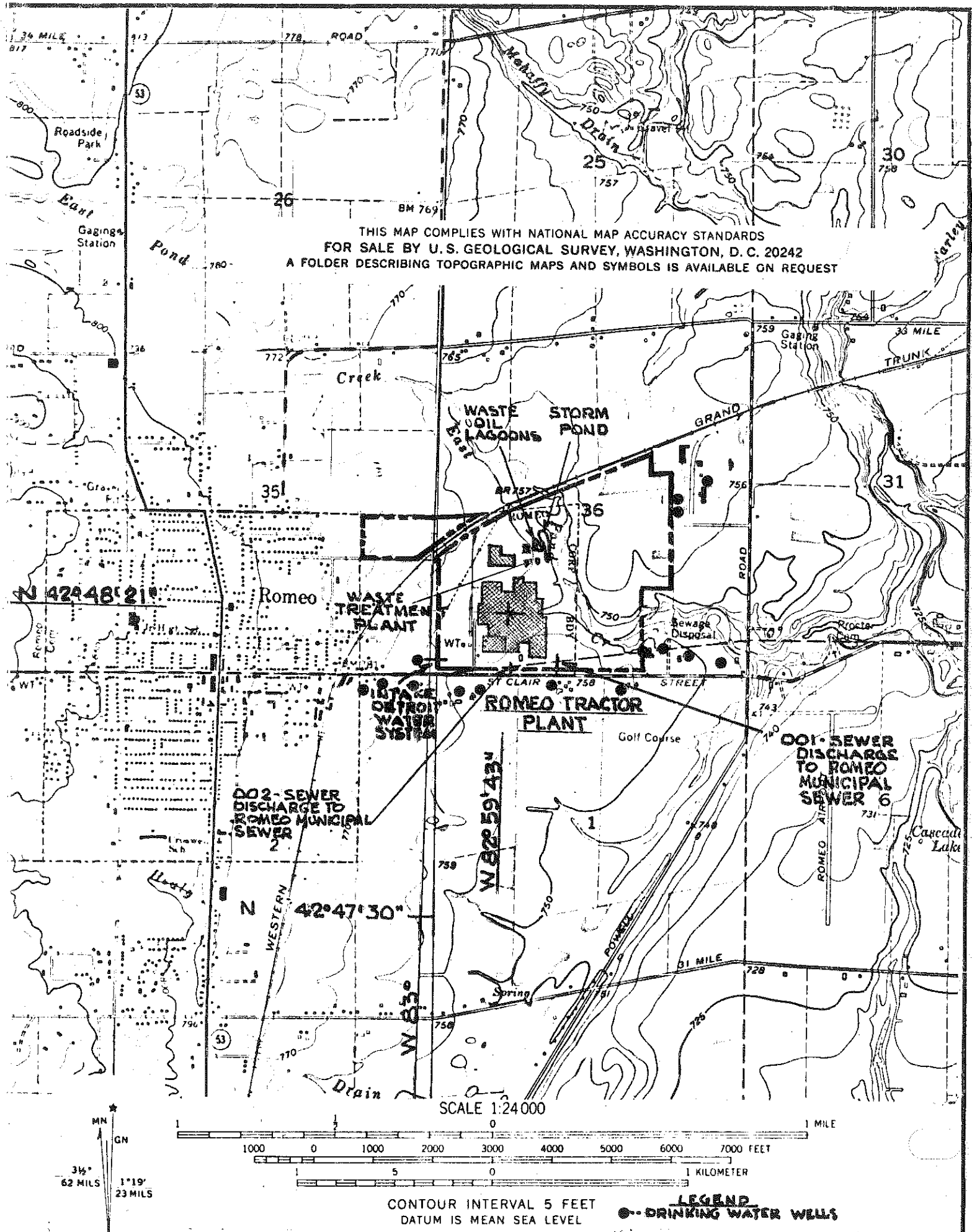
701 - East 32 Mile Rd.
Romeo, Mich. 48065

HS

Mr. Basil G. Constantelos, Director
Waste Management Division
U.S. Environmental Protection Agency
Region 5
230 South Dearborn Street
Chicago, Illinois 60604

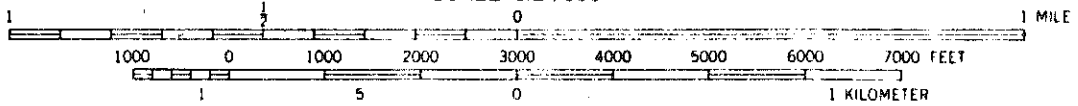
REGISTERED MAIL

- R 316 091 545



THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U. S. GEOLOGICAL SURVEY, WASHINGTON, D. C. 20242
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

SCALE 1:24 000



CONTOUR INTERVAL 5 FEET
DATUM IS MEAN SEA LEVEL

LEGEND
● DRINKING WATER WELLS

LOCATION MAP-ROMEO TRACTOR PLANT ROMEO, MICHIGAN

UTM GRID AND 1968 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET



SALINE SAMUEL KENNEDY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

ROMEO TRACTOR
& EQUIP. PLANT
NOV 10 53 AM '85
PLANT MANAGER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ford Motor Company
Romeo Tractor Plant
701 E. 32 Mile Road
Romeo, MI 48065
ID #MID078400165

RE: Request for Information Pursuant to §3007 of the Resource Conservation and Recovery Act, 42 U.S.C. §6927

Dear Sirs:

On July 3, 1985, the U.S. Environmental Protection Agency, Region V sent most of the land disposal facilities in Region V a letter advising them that the Resource Conservation and Recovery Act (RCRA) had been amended by the Hazardous and Solid Waste Amendments of 1984 (the Amendments), and in particular informing them of a new provision known as the loss of interim status provision. The purpose of this letter is to provide additional guidance relative to the loss of interim status provision and to request information regarding your operations before and after November 8, 1985.

The loss of interim status provision provides:

(2) In the case of each land disposal facility which has been granted interim status under this subsection before the date of enactment of the Hazardous and Solid Waste Amendments of 1984, **interim status shall terminate on the date twelve months after the date of the enactment of such Amendments unless the owner or operator of such facility**

(A) applies for a final determination regarding the issuance of a permit under subsection (c) for such facility before the date twelve months after the date of the enactment of such Amendments; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

The U.S. Environmental Protection Agency's interpretation of the requirements under this provision is published at 50 Federal Register 38946 (September 25, 1985), a copy of which is enclosed. Please read and follow this closely. In order for you to continue to place hazardous wastes in land disposal units at your facility on and

after November 8, 1985, by that date you must (1) submit a Part B operating permit application and (2) a certification of compliance with all applicable groundwater monitoring and financial responsibility requirements. Certification is authorized on a facility-wide or unit-by-unit basis. The certification should be sent to U.S. EPA, Region V, Waste Management Division, RCRA Enforcement Section, 230 South Dearborn Street, Chicago, Illinois 60604, and to the State. Except for facilities in Minnesota, the permit application or post-closure permit application should be sent to RCRA Activities, U.S. EPA, Region V, P.O. Box A3587, Chicago, Illinois 60690-3587. Except for facilities in Michigan, the closure-plan should be sent to the State.

The owner/operator of a facility may certify compliance only if the facility or units for which interim status is retained is in physical compliance. Because this is a provision of federal law, an order by any agency that has a compliance date on or beyond November 8, 1985 does not relieve the owner/operator of the obligation to be in physical compliance by the statutory date when the certification is due. You may not interpret or rely on an order or compliance schedule therein as an extension of the November 8, 1985 deadline. Moreover, difficulties in achieving compliance, such as obtaining insurance, are not grounds for filing a certification if you are not in physical compliance.

If you do not certify compliance with ground-water monitoring and financial responsibility requirements and/or you do not submit a Part B permit application by November 8, 1985, you must cease placement of wastes into the land disposal units in question by that date and you must comply with all closure and post-closure requirements. This follows by operation of law and does not require notice from U.S. EPA.

You are hereby required, pursuant to the authority of §3007 of RCRA, 42 U.S.C. §6927, to report to U.S. EPA information regarding hazardous waste land disposal units that had interim status on or before November 8, 1985, and/or received hazardous waste after November 19, 1980. In particular, you are to submit the information specified in paragraphs 1-3 of Enclosure I between November 23 and November 27, 1985. Information in paragraph 4 is to be submitted between January 3 and 10, 1986. Each submission must identify the facility by name, address and RCRA I.D. number, be a self-explanatory and complete response, be dated, and be signed.

You may, if you desire, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 CFR §2.203(b). You should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Information covered by such a claim will be disclosed by U.S. EPA only to the extent, and by the means of the procedures, set forth by 40 CFR Part 2, Subpart B.

If no such claim accompanies the information when it is received by U.S. EPA, it may be available to the public by EPA without further notice to you.

Please forward the information requested to:

U.S. Environmental Protection Agency
Waste Management Division
230 South Dearborn Street
Chicago, Illinois 60604
Attn: RCRA Enforcement Section, 5HE-12

Failure to comply with the above request within the time frame specified may result in an enforcement action by U.S. EPA under the authority of §3008 of RCRA, including the assessment of penalties. You should also be aware that knowing falsification of any information provided pursuant to this request is a criminal violation under §3008(d)(3) of RCRA, and other provisions and may result in fines and imprisonment.

If you have any questions with regard to the above, or should you need further clarification regarding your response to this letter, please contact William E. Muno of my staff at (312) 886-4434.

Sincerely,

Gene A. Lucero,

for B.G. Constantelos, Director
Waste Management Division

Enclosures (2)

ENCLOSURE I

For purposes of the information request, the following definitions shall apply:

"Hazardous waste" means those solid wastes identified as hazardous waste in 40 CFR part 261, or the authorized state program in which a facility is located whichever is more inclusive.

"RCRA Land Disposal Units" shall include landfills, land treatment units, surface impoundments used for storage, treatment or disposal, waste piles and class I hazardous waste underground injection wells subject at any time to regulations or other requirements under subtitle C of the Resource Conservation and Recovery Act.

INFORMATION REQUEST

(1) Identify each RCRA land disposal unit at your facility by stating the common name or identifier used by the facility and Part A process code. Identify the unit on a photocopy of a topographic map attached to your response.

(2) Identify each RCRA land disposal unit at your facility which was not within the scope of a certification of compliance with all applicable groundwater monitoring and financial responsibility requirements and a Part B permit application, transmitted to EPA by November 8, 1985, by indicating for each such unit the common name or identifier used by the facility and Part A process code, which unit must be identified on the topographic map identified in response to information request number 1 above.

(3) For each RCRA land disposal unit at your facility which was not within the scope of a certification of compliance with all applicable groundwater monitoring and financial responsibility requirements and a Part B permit application transmitted to EPA by November 8, 1985 (these units were to be identified in answer No. 2 above), state when and to whom a closure plan was submitted.

(4) For each RCRA land disposal unit at your facility which was not within the scope of a certification of compliance with all applicable groundwater monitoring and financial responsibility requirements and a Part B permit application transmitted to EPA by November 8, 1985:

- a. State the type and average quantity of hazardous wastes placed in each on a daily (or monthly) average during the year prior to November 8, 1985..
- b. State when the unit ceased receiving hazardous waste;

- c. State whether hazardous waste was placed in the unit at any time between November 8, 1985 and December 31, 1985;
- d. State how the hazardous waste introduced into the unit before November 8, 1985 has been treated, stored or disposed of between November 8, 1985 and December 31, 1985.
- e. State how you intend to treat, store or dispose of that hazardous waste identified in "d", in 1986, including the identity of any off-site facility to which you intend to ship it.

Federal Register

Wednesday
September 25, 1985

Part II

Environmental Protection Agency

40 CFR Parts 265 and 270

**Interim Status Standards for Owners and
Operators of Hazardous Waste
Treatment, Storage and Disposal
Facilities; EPA Administered Permit
Programs: Hazardous Waste Permit
Program; Notice of Implementation and
Enforcement Policy**

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Parts 265 and 270**

(SWH-FRL 2868-3)

**Interim Status Standards for Owners
and Operators of Hazardous Waste
Treatment, Storage and Disposal
Facilities; EPA Administered Permit
Programs: the Hazardous Waste
Permit Program****AGENCY:** Environmental Protection
Agency.**ACTION:** Notice of implementation and
enforcement policy.

SUMMARY: On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted (Pub. L. 98-616). These Amendments made changes to section 3005(e) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6925(e). Under the amendment to section 3005(e), an interim status land disposal facility will lose interim status on November 8, 1985 unless the facility applies for a final determination regarding the issuance of a permit and certifies compliance with all applicable ground-water monitoring and financial responsibility requirements by that date. This notice sets forth the Environmental Protection Agency's (EPA) policy regarding the implementation of this provision as it applies to interim status land disposal facilities.

DATE: All interim status land disposal facilities are required to submit an application for a final determination and the applicable certifications by November 8, 1985, or interim status will be terminated by statute. In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under RCRA that render the facility subject to the requirement to have a permit under section 3005, facilities will have 12 months after the date on which the facility first becomes subject to permit requirements to submit an application for a final determination and the applicable certification, or interim status will be terminated by law.

FOR FURTHER INFORMATION CONTACT:

Region I: Jerry Levy, Chief, Compliance Monitoring and Enforcement Section HSE/Causeway, U.S. EPA, John F. Kennedy Federal Building, Boston, MA 02203, (617) 223-1591, FTS 223-1591.

Region II: Stanley Siegel, Chief, NY Compliance Enforcement Section 2AWM, U.S. EPA, 26 Federal Plaza, Room 1043, New York, NY 10278, (212) 264-8356, FTS 264-8356.

Region III: Peter Schaul, Hazardous Waste Enforcement Branch 3H-WLL, U.S. EPA, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597-8334, FTS 597-8334.

Region IV: Allan Antley, Chief, Waste Compliance Section, U.S. EPA, 345 Courtland St., NE, Atlanta, GA 30365, (404) 881-4552, FTS 257-4552.

Region V: Bill Muno, Chief, RCRA Enforcement Section, 5HE-12, U.S. EPA, 230 South Dearborn Street, Chicago, IL 60604, (312) 886-4434, FTS 886-4434.

Region VI: William Rhea, Chief, Hazardous Materials Branch 6AW-H, U.S. EPA, 1201 Elm Street, Dallas, TX 75270, (214) 767-9732, FTS 729-8732.

Region VII: Wayne Kaiser, RCRA Compliance Section, Waste Management Division, U.S. EPA, 728 Minnesota Avenue, Kansas City, KS 66101, (913) 236-2891, FTS 757-2891.

Region VIII: Diana Shannon, Chief, RCRA Compliance Monitoring 8HWM-WM, U.S. EPA, Denver Place, Suite 1300, 999 18th Street, Denver, CO 80202-2413, (303) 293-1502, FTS 564-1500.

Region IX: Judy Walker/Industry Assistance, Toxics and Waste Management Division T-2-1, U.S. EPA, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7472, FTS 454-7472.

Region X: Charles Rice, Chief, RCRA Compliance Section M/S-533, U.S. EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 442-0695, FTS 399-0695.

SUPPLEMENTARY INFORMATION: The contents of today's Notice are listed in the following outline:

- I. Background
- II. Statutory Interpretations
 - A. Land Disposal Facility
 - B. Interim Status
 1. Class I Hazardous Waste Underground Injection Wells
 2. Waste Exclusions
 3. Late and Non-Notifiers
 4. Protective Filers
 - C. Application for Final Determination Regarding the Issuance of a Permit
 - D. Certification of Compliance with all Applicable Ground-Water Monitoring and Financial Responsibility Requirements
- III. Failure to Satisfy Statutory Requirements

I. Background

Under section 3005(a) of RCRA, owners or operators of hazardous waste treatment, storage or disposal facilities are required to obtain a RCRA permit.

Recognizing that EPA would not be able to issue permits to all hazardous waste management facilities at once, section 3005(e) of RCRA provides that a hazardous waste management facility that meets certain requirements will be treated as having been issued a permit. This statutorily-conferred authorization to operate pending issuance or denial of a permit is known as "interim status." A facility may lawfully operate only if it has a permit or interim status.

Prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) a facility's interim status could be terminated only when final administrative disposition of the permit application was made, or if the facility failed to furnish the necessary application information. HSWA amended section 3005(e) to provide additional grounds for termination of interim status for land disposal facilities.

Section 3005(e)(2) which is referred to, hereafter, as the Loss of Interim Status provision states:

In the case of each land disposal facility which has been granted interim status under this subsection before the date of enactment of the Hazardous and Solid Waste Amendments of 1984, interim status shall terminate on the date 12 months after the date of enactment of such Amendments unless the owner or operator of such facility "(A) applies for a final determination regarding and issuance of a permit under subsection (c) for such facility before the date 12 months after the date of enactment of such Amendments; and

"(B) certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements."

Interim status land disposal facilities must satisfy these requirements by November 8, 1985. Under section 3005(e)(3) each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a RCRA permit and which qualifies for interim status must apply for a final determination and submit the applicable certifications within twelve months after the date on which the facility first becomes subject to such RCRA permit requirements or interim status terminates.

The owner/operator of each interim status land disposal facility is responsible for applying for the final permit determination and satisfying certification requirements. In view of the importance of proper and timely filings of permit applications and certifications, and to provide an orderly process for

the submittal of both permit applications and compliance certifications for interim status land disposal facilities, the Agency is today publishing this policy on the Loss of Interim Status provision.

II. Statutory Interpretations

This section defines key terms which appear in the statute.

A. Land Disposal Facility

The statute specifies that "... all interim status land disposal facilities ..." are subject to the requirements of the Loss of Interim Status provision. For the purpose of section 3005(e), the Agency interprets the term "land disposal facilities" to encompass the following types of facilities: landfills; land treatment units; surface impoundments for disposal, treatment, or storage; waste piles; and Class I hazardous waste underground injection wells. EPA believes this interpretation is consistent with RCRA statutory definitions of land disposal (see sections 1004(3), 3004(k)), the legislative history of section 3005(e)(2) and (3) and the general objective of this provision (i.e., to facilitate prompt processing of permits for the compliance by land-based facilities).

B. Interim Status

A treatment, storage or disposal facility that was in existence on November 19, 1980, or on the effective date of statutory or regulatory changes that rendered the facility subject to the requirement to have a RCRA permit, notified EPA as required by RCRA section 3010, and filed a timely application for a RCRA permit (Part A application), is considered to be in interim status until final administrative disposition of the permit application or until interim status is terminated for failure to submit information required to process the permit application. These facilities are subject to the Loss of Interim Status provision. In addition, in States or territories with EPA-authorized RCRA programs, land disposal facilities that have not yet been granted or denied a final RCRA permit (including land disposal facilities that were issued State permits after November 8, 1984) are to submit certifications and Part B applications.

1. Class I Hazardous Waste Underground Injection Wells

Class I hazardous waste injection wells that were in existence on November 19, 1980, or the effective date of statutory or regulatory changes that rendered the facility subject to the requirement to have a RCRA permit, notified EPA as required by § 3010, and

filed a Part A RCRA application are considered to be in interim status under RCRA until such time as final administrative disposition of a RCRA section 3005(c) permit application is made. Such facilities must comply with the applicable sections of Subparts A-E of Part 265 interim status requirements. They are exempted under 40 CFR 265.430 from the RCRA interim status closure/post-closure and financial responsibility requirements of Subpart G and H and are not subject to the ground-water monitoring requirements of Subpart F.

Every state and jurisdiction has an Underground Injection Control (UIC) program in place, either state-administered or EPA-administered, so that all Class I hazardous waste wells are also subject to the UIC requirements. The requirements at 40 CFR 144.21 authorize existing Class I injection wells to operate, subject to certain conditions, until the effective date of UIC permit issuance or denial, in States with approved UIC programs, for five years after approval or promulgation of the UIC program (but not thereafter unless a complete permit application is pending). In States with EPA-administered UIC programs, injection is authorized under the same section, subject to certain conditions, for one year after promulgation of the UIC program and is prohibited thereafter unless a complete permit application is pending. Therefore, until the UIC permit is issued as stated above, the Class I hazardous waste underground injection well is operating under authorization by rule and must comply with UIC program requirements specified, *inter alia*, under 40 CFR 144.28.

Under previous regulations, once a well received a UIC permit, the well was deemed to have a permit-by-rule under RCRA. However, the regulations have been changed due to the enactment of section 3004(u) of RCRA, which provides that corrective action requirements for all solid waste management units must be addressed in any section 3005(c) RCRA permit. The regulations, therefore, have been amended to provide that until such time as a corrective action plan at a given facility addresses corrective action for *all* units, UIC permits issued to Class I hazardous waste underground injection wells after November 8, 1984 will be considered valid permits under the Safe Drinking Water Act, but will not be section 3005(c) RCRA permits-by-rule. 50 FR 28702, 28715-16, 28752 (July 15, 1985) (amending 40 CFR 270.60(b)). Therefore, wells at facilities which have not yet met corrective action requirements for *all* units at the facility, consistent with State law under

approved UIC program, retain RCRA interim status, whether or not they have been issued a UIC permit. Such well operators who have interim status must, therefore, certify compliance with the "applicable" ground-water monitoring and financial responsibility requirements. The specific ground-water monitoring and financial responsibility requirements with which the facility must certify compliance are discussed in detail below in section D.

2. Waste Exclusions

Sections 260.20 and 260.22 of EPA's hazardous waste regulations provide a regulatory mechanism whereby the Agency may temporarily exclude a hazardous waste generated at a specific facility from being treated as a hazardous waste under the RCRA regulations. Interim status land disposal facilities handling wastes that have received "temporary" exclusions are also subject to the Loss of Interim Status provision. A "temporary" exclusion granted under 40 CFR 260.20 and 260.22 by EPA does not terminate the interim status of facilities handling that waste. Thus, the requirements of section 3005(e)(2) apply to these facilities, including facilities where the temporarily excluded waste is the only "hazardous" waste managed.

Facilities which only handle "hazardous" waste subject to a temporary exclusion, however, are not considered to be managing hazardous waste under EPA regulations. Thus they are not currently required to meet Part 265 standards (including ground-water monitoring and financial responsibility requirements), or to obtain a permit. In order words, facilities whose only "hazardous" waste has been "temporarily" excluded, while subject to the Loss of Interim Status provision, are not required to certify compliance with groundwater monitoring and financial responsibility requirements and/or submit a Part B application by November 8, 1985 in order to retain interim status after that date unless their exclusion is revoked prior to this time. If such waste exclusion is revoked, this regulatory action will immediately subject the facility to the requirements of section 3005(e)(3) of RCRA.

3. Late and Non-Notifiers

The Agency believes that the intent of the Loss of Interim Status provision was to bring all unpermitted land disposal facilities into compliance with ground-water monitoring and financial responsibility requirements or to close them. In order to advance this purpose, the Agency believes that it should also

address the problem of those facilities which never qualified for interim status, or who are operating under Interim Status Compliance Letters or section 3008 compliance orders. 40 CFR 265.1(b) states that "the standards in this Part apply to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010 of RCRA, and/or failed to file Part A of the Permit Application as required by 40 CFR 270.10 (e) and (g).

The December 12, 1981 "Guidance on the Applicability of the Interim Status Standards (40 CFR Part 265) to Facilities which have Failed to Qualify for Interim Status" to EPA Regional Enforcement Division Directors also addresses the problem of "non-notifiers." The guidance directed that the Agency would enforce the interim status requirements through the use of Interim Status Compliance Letters (ISCL) and 3008 compliance orders including the assessment of penalties, where appropriate. This use of penalties was emphasized to eliminate the competitive advantage that might otherwise be enjoyed by the "non-notifiers" over facilities that complied with all notification and filing requirements.

In keeping with that policy, EPA believes it reasonable to require owners and operators of land disposal facilities to submit a Part B application and the ground-water monitoring and financial responsibility compliance certifications as a condition of EPA's continued forbearance from enforcement action. Therefore, those facilities which have not fully qualified for interim status should also submit certifications and permit applications if they wish to continue operating.

4. Protective Filers

Protective filers, i.e., facilities that were in existence on November 19, 1980, notified the Agency of their activities according to section 3010, and submitted their Part A application, but have never conducted a regulated activity requiring a permit are not considered by the Agency to be in Interim Status and are not subject to the Loss of Interim Status provision.

C. Application for Final Determination Regarding the Issuance of a Permit

Prior to the enactment of the HSWA, land disposal facilities were not required to submit their Part B permit applications to EPA (or a State) until 6 months after EPA (or the State) requested it. Section 3005(e)(2) now provides that land disposal facilities must "apply for final determination regarding the issuance of a permit" by

November 8, 1985 or lose their interim status, regardless of whether the EPA Regional Office or authorized State has requested the Part B application.

Land disposal facilities wishing to retain interim status and continue operations as a hazardous waste land disposal facility after November 8, 1985, are required to submit a Part B permit application (or in an authorized State, the State equivalent of the Part B application) by November 8, 1985, to satisfy this requirement. These permit applications need to address all applicable requirements, including those set forth in the Hazardous and Solid Waste Amendments of 1984. In States where EPA manages the RCRA program, the Part B application is to be sent to the EPA Regional Office. In authorized States that manage the RCRA program, the permit application is to be sent to both the EPA Regional Office and to the State.

Some facilities have indicated that they plan to continue receiving waste after November 8, 1985, but intend to stop waste receipt and close shortly thereafter. Such facilities must submit an application for a final operating permit, as noted above. This is necessary because, as of November 8, 1985, it is assumed that an operating permit of some kind will be issued to them if they have not closed in a manner that precludes the duty to obtain a permit. The content of the application, however, may be affected by the expected remaining operating life of the facility. For example, if the facility will close before November 1988 and this is reflected in the application (e.g., in the closure plan), then there would be no need to address the HSWA requirement to retrofit existing surface impoundments (section 3005(j)). Applicants planning to continue waste receipt after November 8, 1985, and to close shortly thereafter should discuss the applicability of permit provisions with the EPA Regional Office (and the Authorized State, if appropriate) as soon as possible.

D. Certification of Compliance With All Applicable Ground-Water Monitoring and Financial Responsibility Requirements

In accordance with the requirements of the Loss of Interim Status provision, land disposal facilities must also "certify compliance with all applicable ground-water monitoring and financial responsibility requirements." All applicable ground-water monitoring and financial responsibility requirements are defined as 40 CFR Part 265 Subparts F and H, or the State analogue thereto. The requirements that are considered

applicable depend upon the authorization status of the State in which the facility is located.

- *Facilities located in a State with a Federally managed RCRA program* must certify compliance with 40 CFR Subparts F and H ground-water monitoring and financial responsibility requirements.

- *Facilities located in a State with Only Phase I Authorization* under the RCRA program must certify compliance with the authorized State ground-water monitoring requirements. In States with financial responsibility requirements incorporated as a part of their RCRA programs, facilities must certify compliance with authorized State financial responsibility requirements.

- *Facilities located in a State with Phase II or Final Authorization* must certify compliance with authorized State ground-water monitoring and financial responsibility requirements.

As stated in section II. A., Land Disposal Facility, Class I hazardous waste underground injection wells must comply with a different set of interim authorization requirements.

- *Facilities located in States with Federally managed underground injection control (UIC) programs* must certify compliance with 40 CFR 144.28(g)(1)(iii) ground-water monitoring requirements, as required by the Director. To certify compliance with financial responsibility requirements, Class I hazardous waste underground injection wells must be in compliance with 40 CFR 144.28(d) and 40 CFR Part 144 Subpart F financial responsibility requirements.

- *In primacy States, facilities with Class I hazardous waste underground injection wells* must certify compliance with requirements that are the equivalent of 40 CFR 144.28(g)(h)(iii) ground-water monitoring and Part 144 Subpart F and 144.28(d) financial responsibility requirements.

- *Facilities issued a UIC permit after November 8, 1984, but which are still under RCRA interim status* (see Section II. B. 1) must certify compliance with 40 CFR 146.13(b)(4), ground-water monitoring requirements, where applicable, and 40 CFR 144 Subpart F financial responsibility requirements; or, in primacy States, with equivalent State requirements.

To certify compliance with all applicable requirements a facility must be in "physical" compliance. "Physical" compliance, for the purpose of certification under this provision, means that a facility has "physically" in place all that is specified in the applicable Federal or State ground-water

monitoring and financial responsibility requirements.

A facility that is not in compliance with applicable ground-water monitoring and/or financial responsibility requirements of 40 CFR Part 265 or applicable State requirements may not certify compliance. For example, a facility lacking monitoring wells and a valid waiver may not certify. Similarly, a facility failing to meet financial responsibility requirements may not certify. If a representative of a facility has admitted noncompliance in an enforcement action the facility may not certify unless it achieves and maintains compliance.

Compliance with the financial responsibility requirements is the second pre-requisite for retaining interim status after November 8. The Agency recognizes that some facilities are encountering difficulties in obtaining insurance to satisfy the financial responsibility requirement governing liability coverage (40 CFR 264.17 and 265.17). EPA has recently published a proposed rule which solicits comment on five options the Agency is considering to remedy the problem regarding the availability of liability insurance for RCRA facilities. (See 50 FR 33907.)

For the purpose of this provision, facilities are urged to certify compliance with all applicable ground-water monitoring and financial responsibility requirements for the facility as a whole. If the owner/operator submits the application and the applicable certifications of compliance for some but not all land disposal units, the termination of Interim Status only affects the unit or units at the hazardous waste management facility for which the application and/or certification were not submitted.

EPA believes that this interpretation is reasonable. EPA sees no evidence in the legislative history to suggest that Congress meant to stop all operations at a multi-unit facility because a Part B or applicable certifications had not been

properly submitted for one unit. Furthermore, this interpretation of taking action at facilities on a unit-by-unit basis has precedent in EPA's hazardous waste regulations. Section 270.1 allows EPA to deal with permit issuance to a facility on a unit-by-unit basis. With regard to permit issuance, § 270.1(c)(4) states that "EPA may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility."

Facilities should certify compliance by typing or printing a certification statement as shown in Appendix A. These forms should be signed by the individuals specified in 40 CFR 270.11. An original certification will be required for each submission (no photocopies of signatures will be acceptable).

Copies of a facility's certification and Part B or state final operating permit application must be submitted to both the EPA Regional Office and the State in which the facility is located. However, facilities in a State with a Federally run RCRA program need only submit these documents to the Region.

III. Failure To Satisfy Statutory Loss of Interim Status Requirements

All owners/operators of land disposal facilities or units that do not apply for a final determination with regard to a permit and certify compliance with all applicable ground-water monitoring and financial requirements, must comply with all applicable closure and post-closure requirements as specified in 40 CFR Part 265 Subpart G or the equivalent State requirement, as applicable, and must stop introducing wastes into facilities or units not retaining interim status on and after November 8, 1985. The owner/operator of the facility or affected units will be required to submit a closure plan within 15 days of loss of interim status (40 CFR 265.112), i.e., by November 23, 1985. In addition, facilities that closed after

January 28, 1983, must submit their post-closure permit application (upon request by the Region or authorized States). Post-closure permit applications must address continuing releases as required by the newly amended section 3004(u) of RCRA. (Facilities losing interim status remain subject to corrective action orders and civil actions.)

Owners and operators of facilities should be aware that false certification and operation without interim status are criminal offenses. In addition, the Agency intends to take enforcement action regarding inadequate closures.

Dated: September 16, 1985.

Lee M. Thomas,
Administrator.

Appendix A—Certification Statement

I _____, am the owner/
operator of _____

(EPA ID #) located at:

I certify that the

(name of unit(s) as identified on the attached surface topography map) at this facility is in compliance with: (1) All applicable ground-water monitoring and financial responsibility requirements in 40 CFR Part 265 Subparts F and H; or (2) all applicable State ground-water monitoring and financial responsibility requirements which are part of the State's authorized hazardous waste program under section 3005 of RCRA.

I, _____, as owner-operator of _____, located at _____

knowingly and willfully make this true and accurate certification to the United States Environmental Protection Agency pursuant to section 3005(e) of the Hazardous and Solid Waste Disposal Act, as amended.

(Date) _____

(Signature) _____

Note: Federal Law subjects anyone who falsely makes or uses this certification to a fine and imprisonment under SWDA, 18 U.S.C. 1001 and 18 U.S.C. 1341.

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